

Title: Mounting System

Application Number: 10/672,273
Response to Office Action mailed 12/17/2004
Navy Case Number 84926

REMARKS

Claims 1, 6, 8, 12 have been amended to overcome Examiners rejection and objections.

Claims 1 and 6 have been amended to over come Section 112 rejections. Claim 3 has been amended to improve readability.

Changes were made to the specification to improve readability, maintain consistency throughout the specification, and to correct grammatical errors. None of these changes are related to the patentability of Applicant's invention.

Section 112 Rejection

Examiner rejected claims 1-12 under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner stated "it is not clear in claims 1-12 whether or not applicant intends to claim the combination of the mounting system with the shelter and transport devise."

Applicant does not intend to claim the shelter or transport devise as an element of the invention.

Claims 1 and 6 have been amended to include in the preamble, language to specifically include "for use with" a shelter and a transport devise. In Amended Claims 1, 6 and 12, the preamble now reads "a mounting system for use with a shelter and a transport devise." Both the shelter and transport devise are described as environmental elements that are not specifically recited as a claim element and are originally introduced and recited within the preamble.

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Examiner also stated that "regarding claim 6, line 3 'the angle assembly comprises' is vague and indefinite as it is not clear whether applicant means each one of the angle assemblies or just one of the angle assembly." Claim 6 has been amended to state "each angle assembly."

Section 102(b) Rejection

Examiner rejected Claims 1-6 under 35 USC 102(b) as being anticipated by Thomas. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdeggal Bros. v. Union Oil Co. of California*, 814 F. 2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).¹ The exclusion of a claimed element, no matter how insubstantial or obvious, from a prior art reference is enough to negate anticipation. Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim. *Connell v. Sears Roebuck, and Co.*, 220 USPQ 193, 198 (Fed. Cir. 1983). The amended claims are therefore not anticipated under 35 U.S.C. 102(b), because Thomas does not teach or suggest a supporting understructure, specifically one where the angle assembly is attached to the understructure. In addition, Thomas teaches reusable concrete form braces that are used in construction. A mounting system for use with a shelter is not discussed, contemplated or even suggested in Thomas. In Thomas, Element 12 is defined as an excavation (column 2, lines 45-46 of Thomas), element 14 is the earth (column 2, line 46) while Element 18 is a plastic lining (column 2, line 48). None of these elements have a similar structure or function as the supporting understructure. In Applicant's invention the shelter is mountable on the understructure. In Thomas such an arrangement is not discussed or contemplated. In addition, none of these elements (12, 14 or 18) are attached to any type of angle assembly or braces (Element 26 in Thomas) as claimed in Applicant's invention.

¹ See MPEP Section 2131.

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Therefore, there is no supporting understructure shown or described in Thomas, thus Thomas does not anticipate Applicant's claimed invention.

Section 103 Rejection

Examiner rejected claims 6-11 under 35 USC 103(a) as being unpatentable over Carlin in view of Reich and further view of Thomas.

To reject under 35 U.S.C. Section 103, the PTO must establish a prima facie case of obviousness. That is to say, the PTO must make a factual showing that the claimed subject matter as a whole would have been obvious to a person of ordinary skill in the art to which that subject matter pertains at the time the invention was made. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or modify the reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.² The applicant respectfully states that the amended claims are not obvious.

The references Thomas, Carlin and Reich do not suggest or teach the use of a mounting system for use with a shelter and transport devise or a mounting system for moving shelters.

Thomas does not teach, suggest or even mention shelters. In fact Thomas relates to an adjustable brace for concrete forms that is utilized in concrete pouring operations. There is no

² See MPEP Section 2143

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suggestion to modify the references or references' teachings to teach a mounting system for a shelter, and the references do not teach or suggest all the claim limitations. Furthermore, there is no indication that the invention in Thomas is mountable to a transport devise or the angle assembly is mountable on a shelter.

In addition, in a typical 35 U.S.C. 103 rejection, the examiner combines the teachings of two or more prior art references. Such a combination is proper, however, if there is some objective teaching in the prior art that would lead one of ordinary skill in the art to combine the relevant teachings of the references. *In re Fine*, 189 USPQ 143, 147.³ Thomas discusses an adjustable brace for concrete forms. It does not teach anything related to any type of mounting systems to be used with shelters; furthermore, Thomas does not give any objective teaching that would lead one of ordinary skill in the art to combine the relevant teachings of Thomas with Carlin or Riech. The mere fact that a prior art structure can be modified to produce the claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). As indicated in *In Re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984), there must be motivation to modify the prior art. The mere fact that the prior art could so be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. No suggestion in the cited references exists to motivate the combination of references. Furthermore, the references do not address the same subject matter as Applicant's invention. As stated above Thomas describes an adjustable brace for concrete forms. Reich describes a storm shelter and Carlin describes a mobile kitchen. Neither reference describes a mounting system for shelters, and neither suggests or discuss any type of mounting system.

³ See MPEP Section 2143.01

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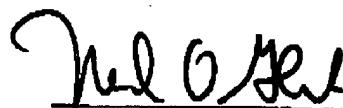
Allowable Claim

Examiner stated "Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 USC 112, 2nd paragraph and to include all of the limitations of the base claim and any intervening claims." Claim 12 has been rewritten to overcome the 112 rejections and includes all of the limitations of the base claim and intervening claims.

Conclusion

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the rejections and objections are requested. Allowance of the claims at an early date is solicited.

Respectfully Submitted,

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